

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHRISTOPHER P. BORST,

Respondent,

v.

STATE OF MISSOURI,

Appellant.

DOCKET NUMBER WD71321

Date: February 22, 2011

Appeal from:
Jackson County Circuit Court
The Honorable William S. Nixon, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, C.J., Presiding, Gary D. Witt, J., and Keith Marquart, Sp. J.

Attorneys:
Shaun J. Mackelprang, and Terrence M. Messonnier, Jefferson City, MO, for appellant.
John P. O'Connor and Michael L. Belancio, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

CHRISTOPHER P. BORST

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WD71321

Jackson County

Before Division Four: Lisa White Hardwick, C.J., Presiding,
Gary D. Witt, J., and Keith Marquart, Sp. J.

The State of Missouri appeals the judgment granting post-conviction relief to Christopher Borst based on a finding of ineffective assistance of counsel. The circuit court set aside Borst's convictions on two counts of first-degree statutory sodomy and two counts of incest and ordered a new trial. The State contends the court clearly erred in granting such relief because the evidence did not establish that Borst's trial counsel was ineffective in failing to present the victim's school and medical records and in failing to cross examine the victim's mother about prior false accusations.

REVERSED.

Division Four holds: The circuit court clearly erred in granting relief under Rule 29.15 because Borst failed to prove that his defense counsel provided

ineffective assistance or that he was prejudiced by defense counsel's conduct.

Borst did not overcome the presumption that his counsel exercised reasonable trial strategy in deciding not to present additional impeachment evidence against the victim's mother. Even if the impeachment evidence had been presented, the outcome of the trial would not have been different because there were multiple witnesses who gave testimony similar to that of the victim's mother, and Borst admitted to acts of sexual abuse against the victim. The judgment is reversed, and the convictions are reinstated.

Opinion by: Lisa White Hardwick, Judge

February 22, 2011

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